

REMARKS/ARGUMENTS

Claims 1-12 are pending.

Claim Rejections -- 35 USC §103

Claims 1-12 were rejected under 35 USC §103(a) as being unpatentable over Merlino et al. in view of Felten et al. The Examiner took the position:

"... table 2 [of Merlino] shows detection of 100% of hospital acquired stains with methicillin or oxacillin. This indicated that there was growth thus detecting the hospital acquired MRSA. However, it should be noted that the claims do not exclude that the strains be hospital acquired or community acquired, but encompass either. The rejection is therefore maintained and one would have a reasonable expectation of success with the combination of references."

Applicants respectfully traverse.

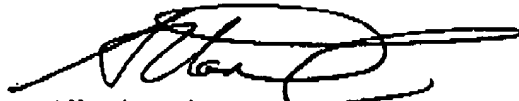
The state of the art at the time of the invention would have led the artisan of ordinary skill away from the present invention. Using a method different than presently claimed, Merlino demonstrated that an MRSA assay using oxacillin and methicillin incorporated into a chromogenic medium was unable to detect 70 of 100 *community* acquired MRSA strains. The Examiner pointed out that 100 of 100 *hospital* acquired strains were detected by the same means. If one were to assume equal prevalence of hospital acquired and community acquired MRSA, 70 of 200 MRSA strains, whether hospital or community acquired, were not detected by the the Merlino assay. Merlino's uncertainty undermines the allegation that the combination of Merlino and Felten would have given the artisan of ordinary skill a reasonable expectation of success.

Furthermore, Felten states that "cefoxitin induced production of PBP2a [i.e., penicillin-binding protein 2a] *in vitro* in MSSA [i.e., methicillin-susceptible *S. aureus*] isolates ..." Felten at 2767, col. 1. Accordingly, the artisan of ordinary skill at the time of the invention would be concerned that cefoxitin would cause methicillin susceptible strains to appear resistant, resulting in false positives. The Examiner provides no evidence on the record that would have motivated the proposed modification or would have caused the artisan of ordinary skill to have a reasonable expectation of success. Applicants respectfully submit that a proper *prima facie* case of obviousness has not been made, and the rejection should be withdrawn.

US Serial No. 10/753,417
Response to Office Action dated Jan. 30, 2006

In view of the above response, Applicants believe the pending application is in condition for allowance.

Respectfully submitted,



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